

February 19, 2015

TO: MEMBERS OF THE BANKING COMMITTEE

FROM: CONNECTICUT BANKERS ASSOCIATION

Contacts: Tom Mongellow or Fritz Conway

RE: House Bill 5652, AN ACT CONCERNING PERSONAL BANK ACCOUNTS FOR
UNDOCUMENTED IMMIGRANTS

Proposed House Bill 5652 would amend Connecticut's banking statutes to allow "undocumented immigrants" to open personal bank accounts. Unfortunately, the bill would clash with *federal* law, which expressly prohibits a bank from opening and/or maintaining deposit account relationships in certain circumstances.

By way of background, all banks are subject to a federal law known as the Bank Secrecy Act (or "BSA"). The BSA is primarily designed to detect and prevent illegal activities, including money laundering and terrorism. To accomplish this objective, under the BSA, before opening an account, a bank is required to establish a reasonable belief that it "*knows the true identity*" of its customer. Indeed, federal law prohibits the establishment of a customer relationship, including a deposit account, unless the applicant is able to provide adequate proof of identity. Assuming an account relationship can lawfully be established, the BSA then requires the bank to exercise ongoing due diligence to ensure that it "*knows its customer*" (including the monitoring of customer deposit activities). In so doing, the bank is also required to report "suspicious activities" to federal law enforcement officials and/or to close an account if the proceeds in the account are determined to be from an "*unlawful activity*". Failure to comply with these BSA requirements can subject the bank and its employees to criminal sanctions, including fines, jail time, and possible closure of the institution.

Against this backdrop, please understand that all banks genuinely want to serve the members of their communities including those members who may be "unbanked" or "underbanked". Unfortunately however, because of federal law, "undocumented immigrants" present unique challenges and risks for banks under the BSA. These challenges and risks start with the fundamental problem that many undocumented individuals are unable to provide a bank with adequate proof of their "true identity". Without that proof, a bank cannot open an account without violating the BSA.

The challenges and risks are further compounded by complex and often conflicting federal immigration laws and enforcement policies that apply to persons who are unable to prove their lawful presence in the United States. For example, under federal law, such persons are considered to be here illegally and it is considered a crime for an employer to employ such a person (possibly making the wages that are deposited into a deposit account "*proceeds from an unlawful activity*"). And yet, at the same time, the IRS permits undocumented individuals to pay taxes on their wages and compels banks to follow a complex set of tax reporting and withholding rules if an account is opened for such a person.

Despite this complex web of conflicting laws, some banks have been willing to take on the inherent compliance challenges and risks. By establishing complex and administratively expensive compliance procedures, they have been able to offer programs that enable the opening of bank accounts for *some* (but not all) undocumented immigrants. However, other banks have appropriately determined that, based on their compliance resources and size, it would not be prudent to undertake those risks and challenges. Connecticut should not try to compel all banks, regardless of their size and resources, to take on these compliance challenges and risks. And Connecticut cannot, under any circumstances, expect a bank to open or maintain a deposit account for an undocumented immigrant if such an action would violate federal law.

In conclusion, Connecticut should not adopt a law which places banks in the middle of a complex national policy debate. Banks cannot violate federal law, and HB 5652 would expose banks, and their personnel, to potential criminal sanctions for violations of the BSA. For all of these reasons, we urge you to oppose HB No. 5652.

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